

**Introduced by Senator Peace**

February 19, 1999

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An act to amend Section 1584.5 of the Civil Code, relating to unsolicited commerce.

LEGISLATIVE COUNSEL'S DIGEST

SB 556, as introduced, Peace. Unsolicited commerce.

Existing law provides that no person or entity shall offer for sale goods, wares, merchandise, or services through an offer involving the voluntary and unsolicited sending or providing of the goods, wares, merchandise, or services. Existing law also provides that this prohibition applies to merchandise or services offered for sale or approval through the mails when the merchandise or services are not actually ordered or requested, and will be mailed or provided to the consumer unless the consumer rejects the offer. Existing law, however, provides certain exceptions from this prohibition, including an exception for certain contractual plans or arrangements under which the seller periodically provides the consumer with a form or announcement card that may be used by the consumer to instruct the seller not to ship offered merchandise, as specified.

This bill would delete this exception and make other related changes to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1584.5 of the Civil Code is  
2 amended to read:

3 1584.5. No person, firm, partnership, association, or  
4 corporation, or agent or employee thereof, shall, in any  
5 manner, or by any means, offer for sale goods, wares,  
6 merchandise, or services, where the offer includes the  
7 voluntary and unsolicited sending or providing of goods,  
8 wares, merchandise, or services not actually ordered or  
9 requested by the recipient, either orally or in writing. The  
10 receipt of any goods, wares, merchandise, or services shall  
11 for all purposes be deemed an unconditional gift to the  
12 recipient who may use or dispose of the goods, wares,  
13 merchandise, or services in any manner he or she sees fit  
14 without any obligation on his or her part to the sender or  
15 provider.

16 If, after any receipt deemed to be an unconditional gift  
17 under this section, the sender or provider continues to  
18 send bill statements or requests for payment with respect  
19 to the gift, an action may be brought by the recipient to  
20 enjoin the conduct, in which action there may also be  
21 awarded reasonable attorney's fees and costs to the  
22 prevailing party.

23 For the purposes of this section—~~and limited to~~  
24 ~~merchandise or services offered for sale through the~~  
25 ~~mails~~, the “voluntary and unsolicited sending or  
26 providing of goods, wares, merchandise, or services not  
27 actually ordered or requested by the recipient, either  
28 orally or in writing,” includes any *goods, wares,*  
29 *merchandise, or services* selected by the ~~company~~ *person*  
30 *or other entity* and offered to the ~~consumer~~ *recipient* which  
31 *recipient that* will be mailed to him or her for sale or on  
32 approval or provided to him or her unless he or she  
33 exercises an option to reject the offer of sale or receipt on  
34 approval. ~~Merchandise~~ *Goods, wares, merchandise, or*  
35 *services* selected by the seller and offered for sale on a  
36 periodic basis must be affirmatively ordered by a  
37 statement or card signed by the ~~consumer~~ *recipient* as to  
38 each periodic offer of *goods, wares, merchandise, or*

1 services. This paragraph shall not apply to any of the  
2 following:

3 (a) ~~Contractual plans or arrangements complying~~  
4 ~~with this subdivision under which the seller periodically~~  
5 ~~provides the consumer with a form or announcement~~  
6 ~~card which the consumer may use to instruct the seller~~  
7 ~~not to ship the offered merchandise. Any instructions not~~  
8 ~~to ship merchandise included on the form or card shall be~~  
9 ~~printed in type as large as all other instructions and terms~~  
10 ~~stated on the form or card. The form or card shall specify~~  
11 ~~a date by which it shall be mailed by the consumer (the~~  
12 ~~“mailing date”) or received by the seller (the “return~~  
13 ~~date”) to prevent shipment of the offered merchandise.~~  
14 ~~The seller shall mail the form or card either at least 25~~  
15 ~~days prior to the return date or at least 20 days prior to the~~  
16 ~~mailing date, or provide a mailing date of at least 10 days~~  
17 ~~after receipt by the consumer, except that whichever~~  
18 ~~system the seller chooses for mailing the form or card, the~~  
19 ~~system must be calculated to afford the consumer at least~~  
20 ~~10 days in which to mail his or her form or card. The form~~  
21 ~~or card shall be preaddressed to the seller so that it may~~  
22 ~~serve as a postal reply card or, alternatively, the form or~~  
23 ~~card shall be accompanied by a return envelope~~  
24 ~~addressed to seller. Upon the membership contract or~~  
25 ~~application form or on the same page and immediately~~  
26 ~~adjacent to the contract or form, and in clear and~~  
27 ~~conspicuous language, there shall be disclosed the~~  
28 ~~material terms of the plan or arrangement including all~~  
29 ~~of the following:~~

30 (1) ~~That aspect of the plan under which the subscriber~~  
31 ~~must notify the seller, in the manner provided for by the~~  
32 ~~seller, if he or she does not wish to purchase or receive the~~  
33 ~~selection.~~

34 (2) ~~Any obligation assumed by the subscriber to~~  
35 ~~purchase a minimum quantity of merchandise.~~

36 (3) ~~The right of a contract-complete subscriber to~~  
37 ~~cancel his or her membership at any time.~~

38 (4) ~~Whether billing charges will include an amount for~~  
39 ~~postage and handling.~~

1 ~~(b) Other~~ contractual plans or arrangements ~~not~~  
2 ~~covered under subdivision (a)~~, such as continuity plans,  
3 subscription arrangements, standing order  
4 arrangements, supplements, and series arrangements,  
5 under which the seller periodically ships merchandise to  
6 a ~~consumer~~ recipient who has consented in advance to  
7 receive the merchandise on a periodic basis. *In order for*  
8 *this exception to apply, the agreement between the seller*  
9 *and the recipient shall be in writing and shall be signed*  
10 *by the recipient, and shall contain a statement that the*  
11 *recipient understands that he or she is consenting in*  
12 *advance to receive merchandise on a periodic basis. This*  
13 *statement shall be printed in type as large as the largest*  
14 *type appearing on the agreement.*  
15 As used in this section, “recipient” includes a  
16 prospective recipient.

